

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Promote Policy  
and Program Coordination and Integration in  
Electric Utility Resource Planning.

Rulemaking 04-04-003  
(Filed April 1, 2004)

**ADMINISTRATIVE LAW JUDGE'S RULING  
ON NOTICE OF INTENT OF UTILITY CONSUMERS'  
ACTION NETWORK TO CLAIM COMPENSATION**

**1. Summary**

On September 8, 2004, Utility Consumers' Action Network (UCAN) filed a Notice of Intent (NOI) to claim intervenor compensation in this proceeding. In accordance with § 1804 (b)(2),<sup>1</sup> this ruling addresses issues raised by the NOI.

**2. Timeliness of Filing**

Pursuant to § 1804 (a)(1), a customer who intends to seek a compensation award shall file and serve its NOI within 30 days after the prehearing conference is held. The first prehearing conference in this proceeding was held on April 30, 2004, or more than four months prior to UCAN's submission of its NOI. However, on August 5, 2004, UCAN petitioned to intervene in this proceeding, noting that:

It recently came to UCAN's attention that parties that had planned to actively intervene and present testimony in this proceeding were unable to be as active as they had planned. As a result, a void was

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<sup>1</sup> Section references are to the Public Utilities Code.

created where the Commission might not benefit from the [San Diego] region's perspective on SDG&E's resource plan. UCAN determined that the issues are simply too important to be overlooked by the Commission and made a decision to participate in this proceeding. (UCAN Petition to Intervene, p. 2.)

UCAN's petition to intervene was granted by ruling dated August 13, 2004. A second prehearing conference to address scheduling of hearings on the long-term procurement plans of the utilities was held on August 25, 2004. Under the circumstances noted above, it is wholly appropriate to compute the time for the filing of UCAN's NOI from the date of the second prehearing conference. UCAN's NOI is timely filed.

### **3. Customer Category**

Section 1802(b) defines "customer" in three ways: a participant representing utility consumers, a representative authorized by a customer, and a representative of a group or organization that is authorized by its articles of incorporation or bylaws to represent the interests of residential customers or certain small commercial customers. UCAN is a "Category 3" customer, i.e., one that is authorized pursuant to its bylaws to represent residential customers.

### **4. Adequacy of Representation**

UCAN is addressing in this proceeding issues relating to the completeness of San Diego Gas & Electric Company's long-term procurement plan and its impact on small consumers in the utility's service territory. UCAN notes that no other consumer group has purported to represent this well-defined interest. UCAN has shown that it will represent consumer interests that would otherwise be underrepresented.

## **5. Nature and Extent of Planned Participation**

The NOI must include a statement of the nature and extent of the customer's planned participation as far as it is possible to set out when the NOI is filed. (§ 1804(a)(2)(A)(i).) UCAN has complied with this requirement by indicating that it plans active participation in the evidentiary hearings and in briefing. As of the date of its NOI, UCAN had presented expert testimony to support its position and had cross-examined SDG&E's witnesses.

## **6. Itemized Estimate of Costs of Participation**

The NOI must include an itemized estimate of the compensation that the customer expects to request, given the likely duration of the proceeding as it appears at the time the NOI is filed. (§ 1804(a)(2)(A)(ii).) UCAN has estimated that it will incur expenses of \$25,000 for its attorney, \$35,000 for expert witness fees, and \$800 in incidental expenses for a total expense estimate of \$60,800.

## **7. Significant Financial Hardship**

For Category 3 customers such as UCAN, "significant financial hardship" means that the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding. (§ 1802(g).) The customer may make a showing of significant financial hardship in its NOI; alternatively, it may make a showing of significant financial hardship when it files for an award of compensation. (§ 1804(a)(2)(B).)

There are two ways for a customer to show how it meets the "significant financial hardship" test in its NOI. It can either include a showing of significant financial hardship or it can rely upon the "rebuttable presumption" that is established if the customer has been found to be eligible for compensation in another proceeding where such finding was made within one year of the date of commencement of the subject proceeding. (§ 1804(b)(1).)

UCAN's NOI refers to an expected finding of significant financial hardship in Application 04-06-035. However, UCAN does not provide any reference to an actual finding of significant financial hardship that would establish a rebuttable presumption for purposes of this proceeding. Since UCAN's NOI neither shows significant financial hardship nor provides a reference to a previous finding that would create a rebuttable presumption of eligibility, UCAN will need to demonstrate significant financial hardship or establish that the rebuttable presumption applies in its request for an award of compensation.

**IT IS RULED** that Utility Consumers' Action Network is eligible for an award of intervenor compensation, provided that when it files for an award of compensation it must include either a showing of significant financial hardship or a valid reference to a finding of eligibility in another proceeding that would create a rebuttable presumption of eligibility for this proceeding. The exact amount of such award, if any, shall be based on the reasonableness of its request for an award. This ruling in no way ensures compensation. The Commission may audit the records and books of the customer to the extent necessary to verify the basis of the award. (§ 1804(d).)

Dated September 16, 2004, at San Francisco, California.

/s/ MARK S. WETZELL

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Mark S. Wetzell  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling on Notice of Intent of Utility Consumers' Action Network to Claim Compensation on all parties of record in this proceeding or their attorneys of record.

Dated September 16, 2004, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.